

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PATIENCE TUCKER,

Plaintiff,
AL
TION
Defendant.

Case No. 2:12-cv-00766-KJD-CWH

ORDER

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION

Defendant.

This matter was referred to the undersigned Magistrate Judge on Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (#1), filed May 8, 2012.

I. *In Forma Pauperis Application*

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.

1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a pro se complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

Plaintiff's complaint challenges a decision by the Social Security Administration ("SSA") denying disability benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C. § 405(g); *see also* *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curium) ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the claim"). Generally, if the SSA denies a claimant's application for disability benefits, he can request reconsideration of the decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant may request review of the decision by the Appeals Council. If the Appeals Council declines to review the ALJ's decision, a claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

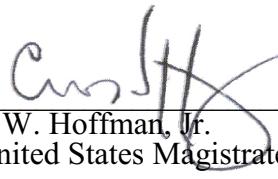
Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of an SSA decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.* An action for judicial review of a determination by the SSA must be brought "in the district court of the United States for the judicial district in which the plaintiff resides." *Id.* A district court can affirm, modify, reverse, or remand a decision if Plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is substantial evidence in the record as a whole to support the findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

Plaintiff alleges that on March 5, 2012, the Appeals Council denied a request for review, and, at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it appears Plaintiff has exhausted administrative remedies and that this suit is timely. Accordingly,

28 **IT IS ORDERED** that:

1. Plaintiff's request to proceed in forma pauperis is **GRANTED**. Plaintiff shall not
2. be required to pay the filing fee of three hundred fifty dollars (\$350.00).
3. Plaintiff is permitted to maintain this action to conclusion without the necessity of
4. prepayment of any additional fees or costs or the giving of a security therefor. This
5. Order granting leave to proceed in forma pauperis shall not extend to the issuance of
6. subpoenas at government expense.
7. The Clerk of Court shall file the Complaint.
8. The Clerk of the Court shall serve the Commissioner of the Social Security
9. Administration by sending a copy of the summons and Complaint by certified mail to:
10. (1) General Counsel, Social Security Administration, Room 611, Altmeyer Bldg., 6401
11. Security Blvd., Baltimore, Maryland 21235; and (2) the Attorney General of the United
12. States, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400,
13. Washington, D.C. 20530.
14. The Clerk of Court shall issue summons to the United States Attorney for the District of
15. Nevada and deliver the summons and Complaint to the U.S. Marshal for service.
16. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has been
17. entered by counsel, upon the attorney, a copy of every pleading, motion or other
18. document submitted for consideration by the court. Plaintiff shall include with the
19. original paper submitted for filing a certificate stating the date that a true and correct
20. copy of the document was personally served or sent by mail to the defendants or counsel
21. for the defendants. The court may disregard any paper received by a district judge or
22. magistrate judge which has not been filed with the Clerk, and any paper received by a
23. district judge, magistrate judge or the Clerk which fails to include a certificate of service.

24. Dated this 26th day of July, 2012.

25. 
26. C.W. Hoffman, Jr.
27. United States Magistrate Judge
28.